

REMARKS/ARGUMENTS

The Office has rejected Claims 4-6 and 12-13 under 35 U.S.C. § 112, first paragraph. It appears that the Office is asserting that there is no support for the inclusion of the transitional phrase “consisting essentially of” in Claims 4-6 and 12-13. Applicants traverse the rejection in view of the disclosure appearing in the specification as originally filed on page 6, line 27 where it is stated:

“[t]he composition of the present invention is suitably applied to the automobile exterior parts *without adding other rubber components or the like.*” (emphasis added)

Further support that Applicants had possession of the invention of Claims 4-6 and 12-13 is found in the Examples of the specification as originally filed. In Example 1, the synthesis of a propylene-containing polymer composition is described. The propylene-containing polymer is mixed with calcium stearate and magnesium-aluminum-hydroxide-carbonate-hydrate as neutralizing agents, an antioxidant and methylene bis(2,4-di-*t*-butylphenol). The resulting composition of Example 1 does not contain “other rubber components or the like” which may *materially* effect the basic and novel characteristics of the claimed composition, such as impact resistance. Applicants submit that additives such as neutralizing agents and antioxidants are recognized by those of ordinary skill in the art not to materially affect impact resistance in polyolefin compositions when used in conventional amounts such as the amounts described in the present Examples.

Applicants submit that the disclosure on page 6, line 27 which specifically provides for the exclusion of “other rubber components or the like” and explicitly discloses flexural modulus and impact strength (page 6, lines 24-25) as properties of the claimed composition, demonstrates that Applicants had possession of the invention claimed in Claim 4 wherein the transitional phrase “consisting essentially of” is used to exclude, for example, other rubber components.

On page 9 of the Office Action of July 3, 2003, the Office questioned whether aluminum-hydroxide-carbonate-hydrate may affect the basic and novel characteristics of the claimed composition. Applicants submit that aluminum-hydroxide-carbonate-hydrate is a neutralizing agent that does not *materially* affect the basic and novel characteristics of the claimed composition when present as a component in the claimed composition such basic and novel characteristics include impact strength and flexural modulus.

The Office rejected Claims 1-3, 7-9 and 14-15 as obvious under 35 U.S.C. § 103(a) as unpatentable over EP 699711 in view of Kamakura (U.S. 5,543,454); Shimijo (U.S. 6,011,102); Watanabe (U.S. 4,621,111); and Sumitomo (U.S. 6,201,090).

The Office rejected Claims 10-11 as obvious under 35 U.S.C. § 103(a) over EP 699711 in view of Kamakura; Shimijo; Watanabe II (U.S. 5,684,099) and Sumitomo.

The Office further rejected Claims 1-15 as obvious under 35 U.S.C. § 103(a) over Watanabe in view of Kamakura; Shimijo; Watanabe and Sumitomo.

Applicants traverse the rejections on at least the following grounds (1) the prior art references do not disclose all of the present claim limitations, namely that the xylene soluble comprises only a single component; (2) the submission of a certified English translation of the priority document JP 11-91644 which serves to antedate one of the prior art references (Sumitomo); and (3) the Declaration submitted under 37 C.F.R. § 1.132 demonstrating that the claimed composition provides significantly superior impact resistance in comparison to the prior art compositions.

It appears that the Office has not given full consideration to one of the limitations of the present claims. Each of independent Claims 1, 4 and 7 of the present application requires that the 25° C xylene solubles comprise only a single component with respect to a relaxation time T1 measured by pulse NMR. This is an important limitation of the presently claimed composition. As stated on page 6, lines 1-4 of the present specification;

“the propylene-ethylene block copolymer composition of the present invention is deteriorated in impact strength if the ordinary temperature xylene soluble fails to comprise only a single component with respect to the relaxation time T1 measured by pulse NMR.”

In contrast to the claimed composition which contains only a single component in the xylene soluble, the composition of EP 699711 contains at least (i) a propylene resin, (ii) a propylene-ethylene block copolymer, (iii) an ethylene-propylene rubber; and (iv) an ethylene- $\alpha$ -olefin copolymer (see Abstract). Applicants submit that it is recognized by those of ordinary skill in the art that the xylene soluble component of a polyolefin composition includes material having rubber characteristics. In the composition of EP 699711 at least the propylene-ethylene block copolymer (ii) and the ethylene-propylene rubber (iii) may have a portion that exhibits rubber characteristics and may therefore to have a xylene soluble component. Therefore, the xylene solubles of the EP 699711 composition may comprise more than a single component with respect to the relaxation time T1 measured by pulse NMR.

Applicants submit the presently claimed invention cannot be obvious in view of EP 699711 when combined with the disclosures of the other prior art references of record at least because the EP 699711 prior art reference does not suggest or disclose one of the present claim limitations, namely that the xylene solubles comprise only a single component with respect to a relaxation time T1 measured by a pulse NMR. The rejections in view of the EP 699711 are therefore not sustainable and should be withdrawn.

Applicants further traverse the rejections in view of a certified English translation of the priority document JP 11-91644 (filed on March 31, 1999) submitted concurrently herewith. The certified English translation of the priority document serves to antedate the Sumitomo patent. The Sumitomo patent issued on March 13, 2001 and has a

§ 102(e) date of February 16, 2000. The effective filing date of the present application is March 29, 2000 (as evidenced by the § 371 date of PCT/JP00/01949). Although the corresponding PCT application of Sumitomo has a PCT publication date of December 23, 1999 this publication qualifies as prior art only under 35 U.S.C. § 102(a) which is after the filing date of the priority document. By swearing behind the U.S. effective filing date of Sumitomo and the publication date of the corresponding PCT publication, Applicants have antedated the Sumitomo prior art reference.

Applicants respectfully request withdrawal of the rejections.

Applicants further traverse the rejections in view of the Declaration submitted under 37 C.F.R. § 1.132. An unexecuted copy of the Declaration is attached herewith. An executed copy of the Declaration will follow in a supplementary submission filed after the filing of the present Request for Reconsideration.

In the Declaration, Applicants have compared the Izod impact strength of the claimed composition with compositions of EP 699711 and Watanabe II (U.S. 5,684,099). When compositions containing methylene bis(2,4-di-t-butylphenol) acid sodium phosphate is used as a nucleating agent in a composition that adheres to the requirements of present independent Claims 1, 4 and 7, it is shown that significantly superior Izod impact resistance can be obtained in comparison to the prior art compositions. In the Table appearing on page 2 of the Declaration it is shown that the Izod impact strength of compositions adhering to the present claim limitations are able to provide a substantially greater Izod impact resistance in comparison to the examples EP 699711 and Watanabe II. In fact, the Izod impact strengths of the claimed composition is at least twice the Izod impact resistance of any of the EP 699711 compositions. Importantly the Izod impact strength of the claimed compositions are measured at -20°C while the Izod impact strength of EP 699711 are measured at 23°C. Applicants submit that those of ordinary skill in the art readily recognize that Izod impact

strength increases with increasing temperature and that the Izod impact strength of the claimed compositions would be expected to be even greater at 23°C in comparison to the Izod impact strength measured at -20°C.<sup>1</sup>

Applicants have also compared the claimed composition against the Examples of Watanabe II. The Izod impact strength at -20°C for the Watanabe II compositions is substantially lower than the claimed compositions. In fact, all of the claimed compositions are able to provide an Izod impact strength that is nearly three times the value of the Izod impact strength obtained for any of the Watanabe II compositions.

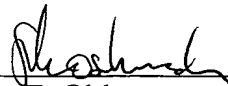
Applicants submit that the data provided in the Table on page 2 of the Declaration demonstrate that the claimed compositions have significantly superior properties in comparison with the prior art composition and therefore the claimed composition is not obvious in view of the prior art compositions.

Applicants submit the remarks above, the certified English translation, and the data of the unexecuted copy of the Declaration attached herewith demonstrate the patentability of the claimed composition in view of the prior art relied upon by the Examiner.

Applicants respectfully request the withdrawal of the rejections.

Respectfully submitted,

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<sup>1</sup> Lower temperatures may increase the brittleness of a composition and thereby reduce Izod impact strength.